



**Global Technical Assistance Program (GTAP)
for Innovative NGO Law Reform Worldwide**

**Quarterly Programmatic Report
April – June 2005**

Under Leader Award No. GEG-A-00-01-00005-00

Submitted by Pact on behalf of the
International Center for Not-for-Profit Law (ICNL)

As indicated in the corresponding quarterly financial report, the total amount expensed under this sub-award to date is \$39,817.82. These figures accurately represent amounts reported to Pact for the period ending May 31, 2005.

I. Executive Summary

During the second quarter of 2005, ICNL continued to assist local non-profit organizations (NPOs) in Mexico and South Africa in achieving desired, measurable changes in the legal environments governing them.

Specifically, ICNL staff twice traveled to Mexico to work with local partners ITAM (Mexico's Autonomous Institute of Technology) and Incide Social to solicit input from the NPO sector on specific challenges they face as a result of operating within the existing legal and fiscal framework. ICNL also met with representatives of the Mexican Finance Ministry (Hacienda) and its equivalent of the IRS (SAT) to gauge their opinion on possible reforms to the existing tax laws and regulations. In response to stated sector and government concerns and queries, ICNL provided legal memoranda on four separate issues. Finally, ICNL hired a Legal Advisor for Latin American programs who bears primary responsibility for the development, implementation and oversight of the Mexico project.

In South Africa, ICNL has continued with its provision of technical assistance to NPC in the drafting of the tax research paper, focusing especially on tax treatment of trading by NPOs. In addition, the DTI review of the company act now complete, NPC, with ICNL's assistance has been formally requested to assist with drafting provisions related to simplification of regulation of current Sec. 21 Companies (NPOs). NPC, together with ICNL has been asked to participate in on-going discussions first hosted by CAF-SA and the Nelson Mandela Foundation, to consider a range of issues, including the possibility of establishing a Commission form of NPO regulation for South Africa, ways to provide increased capacity-building for smaller NPOs around the country, and strategies for improved distribution of funds held by the government, pursuant to the National Development Agency Act. Each of these elements of the project are expected to move forward steadily through the next quarter.

ICNL also began planning the first-ever Global Forum on Civil Society Law, which will be held on November 17-19, 2005 in Istanbul, Turkey. During the quarter it developed the Forum's theme, tracks, and structure. It secured additional funding to sponsor participant travel fellowships and identified appropriate outlets to publicize the Forum.

II. Background

In many countries, the legal framework impedes the development of non-governmental organizations (NGOs). In some cases, the registration process is cumbersome or politicized. In others, think tanks and advocacy groups are effectively prohibited from attempting to influence public policy. In still others, the legal framework limits the ability of NGOs to engage in service delivery and limits incentives for private philanthropy. As a result, NGOs are hindered in their ability to contribute to their country's development.

The Global Technical Assistance Program (GTAP) is designed to address these problems by promoting and disseminating effective practices for NGO law reform. The program has two components: country-specific assistance to support NGO law reform efforts and a Global Summit on NGO Law. Country-specific assistance will focus on Mexico and South Africa, both

of which were identified as countries where targeted technical assistance would have maximum impact both locally and globally.

In Mexico, ICNL is supporting the drafting of amendments to the laws governing Mexican NGOs' eligibility to receive tax deductible donations. Targeting an ever-widening circle of NGO leaders, government officials, and academics, the program's ultimate aim is the adoption of legislation to facilitate the development of philanthropy and civil society in Mexico.

In South Africa, ICNL is working with the Non-Profit Consortium (NPC), a leading South African NGO, to achieve revision of laws affecting NGO incorporation and resource mobilization, improved implementation of enabling laws, and incentives for corporate social investment through tax benefits for corporate donations.

The program emphasizes relationships among local partners, with ICNL as a resource to NPOs for improving the enabling legal environment governing the non-profit sector in each country. ICNL encourages the use of a participatory process for achieving these changes, including sectoral and government perspectives to ensure maximum stakeholder buy-in. An inclusive process of identifying needs, gaining buy-in, and then drafting, advocating, and implementing solutions will ultimately contribute to expanded sectoral and government willingness to communicate and to partner in meeting the needs of the people.

III. Key Results This Period

Mexico

During the second quarter, ICNL staff twice traveled to Mexico and continued to foster effective working relationships with its local partners ITAM and Incide Social (a non-profit, umbrella organization now bearing primary responsibility for convening state and local meetings with NPO representatives). All partners agree that effecting significant change to Mexico's existing tax laws will take time and that improvement will come incrementally. Cognizant of this reality, ICNL, ITAM, and Incide Social continued to hone their enactment strategy.

To facilitate informed discussion, ICNL prepared memoranda on the following issues:

- a) the economic impact of the non-profit sector
- b) the negative effects of capping at 50% the percentage of an organization's income that may be earned from economic activities
- c) customs treatment of in-kind contributions in select countries
- d) an overview of how select countries collect and disseminate aggregate statistics on the sector.

ICNL prepared each memo in response to specific requests for information received from our local partners, government representatives, and our other funder, the Hewlett Foundation.

ICNL staff also met with representatives of Hacienda and the SAT. The meeting served as an opportunity to formally introduce ICNL to both agencies, explain its role in the project and receive input from the representatives on several policies and the reasoning behind them. In particular, we discussed the fact that authorized donees (those organizations entitled to receive

tax deductible donations under Mexican tax law) are not allowed to spend more than 5% of their donations on administrative expenses, the fact that human rights organizations are precluded from obtaining authorized donee status, and the requirement that applicants obtain an authorization certification from the ministry with subject matter jurisdiction over their activities.

Per the input received at this meeting and others, ICNL continues to believe that the SAT will make only minor changes to the current law and that the majority of these changes will be designed to clarify the law to make it more accessible and easy to follow. Hacienda did, however, indicate a willingness to explore alternatives to the accreditation (authorization certificate) requirement and ICNL agreed to prepare a paper on the issue. It will be impossible to know with any certainty what the content and scope of SAT changes since SAT continues to maintain that it will not release a copy of proposed reforms until a draft has been fully vetted internally and presented to Congress. Though this was supposed to occur in April, the SAT has indicated that it now plans to present its proposal to Congress in early September.

Local partners ITAM and Incide Social continue to work, with technical assistance from ICNL, to improve the tax situation for Mexican NPOs. ICNL staff participated in two fora hosted by its local partners designed to solicit input from Mexican foundation, association and NPO representatives on the tax and/or financial-related difficulties they encounter in their day-to-day operations. Representatives openly expressed many familiar concerns including the real constraint that the 5% cap on administrative expenses places on non-profits, the difficulty of finding and retaining good staff given the 5% cap, the need for training and information on the registration process, etc. The local partners will compile the ample anecdotal information gathered from these and other scheduled sessions, combine it with their own findings and draft a report on the situation.

In response to concerns raised during the sessions, ICNL will prepare brief papers on the staffing issues and non-profit reporting requirements to governments. ICNL is prepared to provide additional technical legal assistance as its local partners continue to solicit information from interested stakeholders representing various organizations and geographical regions of the country.

South Africa

Having launched the project, ICNL and partner NPC remained in close contact throughout the quarter. As NPC began work on the tax research paper, ICNL provided technical assistance in the form of comparative research on critical issues NPC is addressing for the South African context, including discussions and e-mail exchanges particularly on SARS treatment of income from economic (trading) activities conducted by NPOs (an essential element in achieving greater sustainability), tax treatment of small businesses versus NPOs, and related matters.

In addition, the complex and duplicative structure of registration, reporting, and governance that was essentially inoperable from the government's point of view and difficult for NPO compliance as well continued as a focus for research and discussion. In particular, problems confronting smaller organizations and voluntary associations became an important focus for the project. In this connection, discussions and exchanges between ICNL and NPC included not

only simplification of reporting requirements (even the employment of a single form of financial reporting in all levels of registration, from formation, through the NPO level, through SARS), but also the planned amendments to the Company Act, Sec. 21 requirements, in hopes of attracting more small NPOs to the system.

During Stephan Klingelhofer's June visit to South Africa, these discussions intensified, with meetings with both SARS Ministry of Finance representatives and Department of Trade and Industry (DTI) officials. At the SARS/Finance meeting, NPC representatives reviewed their planned research paper outline. The government officials expressed great interest in the document, saying that, if it were truly representative of the NPO sector, it could be highly beneficial to both government and the sector in working through misunderstandings and differences. Moreover, it had the promise of bringing about significant changes that would benefit both parties. In discussions about simplification, the SARS Director was clear that his agency hopes to provide a much simpler reporting form for smaller organizations, and he expressed sympathy with the idea of a common reporting form for all levels of registration. As to income from economic/trading activities, he was unsympathetic to any comparison with small business taxation, and wanted more information especially about how other countries were handling this income. ICNL assured SARS/Treasury of its continued support for the NPC efforts, support which was warmly welcomed by the government officials.

At DTI, NPC and ICNL met with Tshepo Mongalo, who is tasked with drafting the new Company Act. Since the last meeting among the parties, DTI visited the UK and met with, among others, ICNL's Chairman, Richard Fries, who Mr. Mongalo reported, was extremely helpful in their discussions of proposed reforms to Art. 21., which covers certain NPOs. Mr. Mongalo asked NPC to take the lead, in their capacity as advisors to DTI, in drafting the new Company Act provisions governing NPOs. ICNL again assured both NPC and DTI that it would provide continued support in the drafting effort, as needed.

In addition, ICNL and NPC participated in discussions in Johannesburg hosted by CAF-SA and the Nelson Mandela Foundation, initially addressing the establishment of a Commission form of NPO regulation in South Africa. NPC provided a paper analyzing the approach and its pertinence to the South African circumstances (ICNL had assisted through comments on drafts of the document), generally observing that, while the idea of a one-stop regulatory process should be explored carefully, while such longer term exploration was underway immediate steps were very possible to effectively streamline the regulatory process under current law. Most of the other organizations present appeared to agree both that the concept of some form of Commission may well make sense and requires intentional study, other steps are needed immediately.

In addition to the legal steps suggested by NPC and ICNL, among others, all agreed that capacity-building, especially for smaller organizations, was a first priority, given that without significantly more management, financial, and governance capacity, most organizations in South Africa would not be able to take advantage of even the simplest system. Moreover, it was determined that the missing element in government responsiveness to both the capacity issue and achievement of simplification reforms remains the NPO Directorate and its Ministry. In addition the distribution of funds under the terms of the National Development Agency Act remains

effectively stalled, and pressure is required to move that distribution forward to assist NPOs to begin to achieve a degree of sustainable growth. The parties agreed to continue the discussion, and revisit the matter.

It should be noted that USAID representative Nomea Masihleho was present at both the SARS/Finance and CAF-SA/NMF meetings, and took an active participatory role in the discussions.

As the project enters a new quarter, ICNL is more actively engaged in research and other technical assistance to NPC, particularly in the drafting of the tax research paper, and in the DTI Company Act revision process. This work is anticipated to continue through the summer, as planned in the GTAP workplan developed by NPC and ICNL earlier in the year.

In the course of the June meetings, ICNL was advised by NPC that the IDASA collaboration on NPC capacity strengthening was underway successfully.

At the closing review with USAID, it was agreed that the program was proceeding on track, with notable steps forward already. USAID, NPC, and ICNL agreed that in the course of gaining consensus and information gathering, it would be useful for NPC to employ (in addition to its own capacity-building network) the wide-ranging IDASA network. Steps were initiated subsequently to ensure this broadened contact structure, to strengthen NPO participation in the reform process as well as NPC's own understanding of issues challenging organizations throughout the country.

Out of all these discussions, it is clear that NPC is well-engaged with critical decision-makers and opinion leaders in both the government and NPO camps. The relationships with CAF-SA, the Nelson Mandela Foundation, and IDASA all are likely to provide a strong base for NPC's representational effectiveness. The links with SARS/Treasury and DTI are essential to the promise of change. However, increased attention must be paid to engaging the NPO Directorate and its ministry in this process as well, and the distribution of funds under the National Development Agency Act.

Global Forum on Civil Society Law

ICNL will host the first-ever Global Forum on Civil Society Law on November 17-19, 2005, in Istanbul, Turkey. ICNL is pleased to report that during the second quarter it successfully secured additional financial support from funders including the Charity Commission for England, Wales, and CAF to sponsor several Forum travel fellowships. ICNL staff also developed the general Forum theme, tracks, and structure and produced a general Forum application and fellowship application. It produced a Forum brochure and website and identified appropriate online and other outlets to widely publicize the Forum.

IV. Comparison of Planned and Actual Accomplishments

Mexico

Activities Planned for This Quarter	Timeline	Status
Provide technical assistance to local partner and SAT officials in identifying issues for reform, drafting principles and amendments, and analyzing proposed reforms.	April to June	Ongoing
Travel to Mexico to meet with stakeholders and broaden the base of involved participants.	April to June	Ongoing
Strategize with regard to the sector's response to the SAT's proposed amendments.	April to June	Ongoing
Co-host and participate in regional meetings to ensure broad public debate on the amendments.	February to May	Ongoing
Schedule and plan a conference and workshop on Enabling Legal Environments for NGOs.	April	Delayed

NGO Enabling Legal Environments conference. ICNL and its local partners continue to believe that a conference at this time would be premature, given the current progress on the draft amendments. ICNL continues to assess whether this conference will happen and if so, when. We initially posited that a conference would be the most effective way to generate interest and energy among stakeholders, raise the profile of the need for fiscal reform, and build momentum for the initiative. Now, we are pleased to report that the fora that local partners ITAM and Incide Social have hosted to date have done this. This does not, however, mean that the conference concept and its relevance have died. Instead, because the partners strongly agree that effecting significant change to Mexico's existing tax laws will take some time and that improvement will come incrementally, we can envision several possible timeframes for hosting such an event. For example, it may behoove the partners to plan a conference once the ITAM/Incide Social/ICNL report is complete and the SAT has presented its proposal to Congress. This clearly will be a time for real education and awareness-building on the issue. That said, we do not necessarily see a conference as the only means of engaging key individuals from the government, the third sector, and other interested parties and may decide that it is not in the best interests of the project to host it.

South Africa

Activities Planned for This Quarter	Timeline	Status
Work on research paper setting out most favorable tax regime for NPOs	March to October	Underway - draft
Develop Research paper with NPC and stakeholders and NPO Directorate re legislative change resulting from Impact Assessment.	March to July	Delayed but underway

Participate in Companies Act review with DTI and working group in order to seek inclusion of administrative streamlining provisions and protection of NPO interests in overhauling of Act	March to August	Underway – drafting revisions to Sec. 21
Planning for University course on NGO law	March to June	Discussions with universities continuing
Develop legal framework for distribution of funds by statutory bodies	August start, with possible initial discussions with government early	High priority, given discussions within NPO sector in June

Research paper on legislative change resulting from Impact Assessment. Production of this paper has had to be postponed due to a delay in finalizing the Impact Assessment on which it is based. The Impact Assessment on the NPO Directorate was carried out by the Government and completed in draft form earlier this year. For reasons unknown to ICNL and NPC, the issuance of the final report has been withheld, but could occur at any time. Naturally, changes in the laws affecting the NPO Directorate and its operations will need to reflect the content of that assessment. In the meantime, ICNL and NPC have continued to plan strategies to better coordinate the registration and reporting process at all levels, including the NPO Directorate.

Planning for University course on NGO law. The planned seminar was cancelled at the last minute by the University of Cape Town, together with other unrelated seminars, for lack of sufficient attendance. We believe the failure to attract interest was due mostly to the high registration fee charged by the University. NPC is now negotiating with alternative university sites elsewhere in the country, and seminars will be scheduled accordingly.

V. Activities Planned for Next Quarter

The following activities are planned for the next quarter:

Mexico

- ICNL will continue to provide technical assistance to local partners and Hacienda and SAT on relevant issues, including labor issues, NPO reporting requirements, and the accreditation requirement. It will participate in at least two regional meetings (in Chihuahua and Guadalajara) with the sector, now tentatively scheduled to take place during the third quarter. ICNL also will work closely with its local partners to review and compile the ample anecdotal information gathered from the sector, combine it with other findings, draft a comprehensive report on the situation, and develop a strategy to present the findings to the sector, Congress, and the general public.

South Africa

- ICNL, working with NPC and other stakeholders, will continue its support for work on a research paper setting out most favorable tax regime for NPOs, as well as circulation of principles to be contained in the paper among key stakeholders throughout South Africa.

- ICNL will assist NPC in its participation in Companies Act review with DTI and the working group, with particular attention to the drafting of proposed amendments to current Sec. 21, in order to achieve inclusion of administrative streamlining provisions and protection of NPO interests.
- Once the Impact Assessment is published, ICNL will work with stakeholders and NPO Directorate NPC in developing the Research paper with NPC re: legislative change resulting from the Impact Assessment. After circulation and comment from the sector and other stakeholders, this paper will be designed to serve as a starting point for negotiating changes in the NPO Act to reflect needs of the sector for procedural simplification and elimination of regulatory duplication and overlap in a legislative effort targeted for the third and fourth quarters of 2005.
- Continue planning for University course on NGO law.
- Assist NPC and other partners in engaging the NPO Directorate and others in reform efforts, and in achieving more effective distribution of funds pursuant to the National Development Agency Act.

Global Forum for Civil Society Law

During the next quarter, ICNL will widely publicize the Forum in identified outlets and with materials produced to date. It will accept and review applications and will identify participants and fellowship recipients. It will focus on critical substantive issues including finalizing the agenda and identifying speakers and presenters as well as logistical issues including hotel and travel arrangements.

VI. Success Stories/Lessons Learned

ICNL remains gratified by the collaborative attitude and approach of partners and stakeholders with whom ICNL has engaged with respect to both projects. Because ICNL's role is specifically focused on the supporting role of providing technical and advocacy support for the efforts underway led by its local partners (notably NPC in South Africa and ITAM and Incide Social in Mexico), the partners' interest in ICNL's perspectives and willingness to discuss both strategy and substance has enabled ICNL to provide assistance as requested, unimpeded by communication difficulties and differences in objectives.

In South Africa, the newly established engagement among CAF-SA, Nelson Mandela Foundation, NPC, and IDASA, among others appears to provide added impetus to the reform efforts, as well as broader engagement of the networks affiliated with these organizations. NPC's ever-increasing proactivity in addressing issues, in seeking relationships and partnerships, and in making its expertise available to government actors as well as NPOs represents a significant step forward. NPC is coming to be known as the "expert," and so long as sufficient funding is available to NPC at a time when funding for other organizations has been lacking, NPC is likely to remain central to the legislative and consensus-building advocacy process. ICNL is fully supportive of NPC's emergence as a key to the reform effort.